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The Applicant seeks to traverse the Examiner's proposed restrictions of the claims of Group I and Group II and to combine and elect the claims of Group I and Group II together. Specifically, with respect to the Examiner's Office Action mailed on 2 July 2002, the Applicant seeks to elect the claims of Group I, namely claims 1-18, 21-34, 37 and 38, together with the claims of Group II, namely Claims 19, 20, 35 and 36. The Applicant has amended Claims 1-38 so as to more properly define the subject matter of the present invention and to place the subject claims in better form for examination purposes. The Applicant reserves the right to file additional divisional applications in due course.

In seeking to traverse the Examiner's separate restriction(s) of the claims of Groups I and II, the Applicant would like to clearly state for the record that it is the inventor's intent that the compositions defined by Claims 19 and 20 be considered variants, i.e., alternate preferred embodiments, of the composition of Claim 1. Similarly, it is the Applicant's intent that the compositions defined by dependent Claims 35 and 36 be considered variants of the composition defined by independent Claim 21.

In support of the Applicant's argument to traverse, the Applicant notes that in enumerable patent applications granted by the U.S. Patent and Trademark Office, it is commonly the case that a "base" invention, (or preferred embodiment thereof), is more broadly defined in an independent claim which is then modified through a series of dependent claims that, taken together with the subject dependent claim, define in more specific terms various preferred embodiments or "variants" of the "base" invention. It is the inventor's understanding that it is generally accepted that an independent claim, if allowed, defines a "stand alone" or "base" invention. Hence, the "base" invention defined by a given

independent claim could almost certainly be viewed as useful separate and apart from any further preferred embodiments as may be defined in one or more dependent claims. If one were to simply and rigidly apply the logic implied by the Examiner's reference to MPEP § 806.04(b), (3rd paragraph) as the basis for the separate restriction of the claims of Group I and Group II, (outside the context of the inventor's intent), it could be construed that enumerable existing patents should have been restricted beyond the level of their independent claims, perhaps to the extent that each additional dependent claim would comprise a separate invention. However, the record, as established by enumerable prior art patents, shows that this has clearly not been the case.

The Applicant submits that the aforementioned patent case history supports the argument for combining the claims of Group I and Group II. First, the claims of Group II are clearly dependent on the independent claims of Group I, and as such, literally define variants of the invention defined by the claims of Group I. The Applicant reiterates that it is the inventor's intent that the dependent claims of Group II define variants of the invention defined by the claims of Group I, and hence, that they be considered part of the same invention. Second, by way of example, the Applicant calls attention to the fact that dependent Claims 2-18 and 37 either further define the "base" composition of Claim 1 or add additional components (and/or further definitions thereof) to the "base" composition of Claim 1. In other words, dependent Claims 2 through 18 also define variants of the invention defined by independent Claim 1. The Applicant notes that the Examiner appears to largely recognize the inventor's intent in this regard by including dependent Claims 2-18 and 37 together with Claim 1, within "Group I." The inventor submits that the only difference between dependent Claims 19 and 20 and the preceding dependent Claims 2-18 is that Claims 19 and 20 define a composition with an additional component that comprises a source (i.e., "inoculum") of "biological organisms," (which is then further defined by Markush groups which include several types of microorganisms and fungi).

The Applicant further submits that the specification establishes the inventor's basis and intent that the compositions defined by Claims 19 and 20 be considered as being variants of (and dependent upon) the composition defined by Claim 1. Hence, in conclusion, the Applicant submits that like dependent Claims 2-18 and 37, Claims 19 and 20 are clearly intended to define variants, i.e., different preferred embodiments, of the composition defined by independent Claim 1.

The Applicant also submits that dependent Claims 35 and 36 are intended to define variants, i.e., different preferred embodiments, of the composition defined by independent Claim 21. The Examiner appears to recognize such intent with respect to Claims 22-34 and 38 (dependents on Claim 21) by including them within Group I. The Applicant hereby restates the arguments presented above for Claims 19 and 20 (with respect to Claim 1) as also being applicable to Claims 35 and 36 (with respect to Claim 21). Hence, the inventor also seeks to combine Claims 35 and 36 of Group II with the claims of Group I for the reasons stated above.

Based on the foregoing, Applicant hereby seeks to traverse the Examiner's proposed restriction of the claims of Group I and Group II and therefore to combine and elect the claims of Group I and Group II together. Specifically, Applicant seeks to elect claims 1-38 for examination. The Applicant has amended Claims 1-38 so as to place them in better form for examination purposes. The Applicant reserves the right to file additional divisional applications in due course.

In the event that the Examiner does not accept the Applicant's arguments to traverse the restrictions of the claims of Group I and Group II, the Applicant hereby provisionally elects, by default, the claims of Group I, specifically Claims 1-18, 21-34, 37 and 38. In such

event, the Applicant would also reserve the right to file additional divisional applications in due course.

Conditional Request for Constructive Assistance

It is the Applicant's belief that this Preliminary Amendment provides a complete response to the Examiner's Office Action dated 2 July 2002. It is also the Applicant's belief that the subject matter of the present invention is novel and unobvious. The Applicant also submits that the claims of Group I and Group II, as amended herein, define the subject matter of the present invention in a manner that is proper and definite. If, for any reason, this response is not deemed complete or this application is not believed to be in full condition for allowance, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to MPEP § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

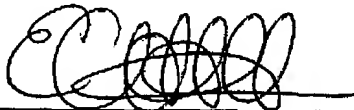


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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, have been faxed to (703) 872-9787, the fax number provided by the Examiner.

1 August 2002



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Page 16 of 22